

HOUSE BILL No. 1129

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-1.5.

Synopsis: Prohibition of serial meetings. Provides that members of a governing body who participate in a series of gatherings either in person or by electronic means (excluding electronic mail) violate the open door law if: (1) at least two but less than a quorum of members attend each gathering; (2) the total sum of different members attending all gatherings equals at least a quorum of the governing body; (3) all the gatherings concern the same subject matter and are held within a period of not more than seven days; and (4) the gatherings are held for the purpose of taking official action on public business.

Effective: July 1, 2007.

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January 8, 2007, read first time and referred to Committee on Government and Regulatory Reform.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1129

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-14-1.5-3.1 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2007]: **Sec. 3.1. (a) A governing body of a**
4 **public agency violates this chapter if members of the governing**
5 **body participate in a series of at least two (2) gatherings of**
6 **members of the governing body and the series of gatherings meets**
7 **all of the following criteria:**

8 (1) Each gathering is attended by at least two (2) members but
9 less than a quorum of the members of the governing body.

10 (2) The sum of the number of different members of the
11 governing body attending any of the gatherings equals at least
12 a quorum of the governing body.

13 (3) All the gatherings concern the same subject matter and
14 are held within a period of not more than seven (7) days.

15 (4) The gatherings are held to take official action on public
16 business.

17 For purposes of this subsection, a member of a governing body

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1 attends a gathering if the member is present at the gathering in
 2 person or if the member participates in the gathering by telephone
 3 or other electronic means, excluding electronic mail.

4 (b) A gathering under subsection (a) does not include:

5 (1) a social or chance gathering not intended to avoid the
 6 requirements of this chapter;

7 (2) an on-site inspection of any project or program;

8 (3) traveling to and attending meetings of organizations
 9 devoted to the betterment of government;

10 (4) a caucus;

11 (5) a meeting between one (1) member of the governing body
 12 and at least one (1) other individual who is not a member of
 13 the governing body concerning public business; or

14 (6) a gathering to receive information about an industrial or
 15 commercial prospect that does not include a discussion of the
 16 terms of a request or an offer of public financial resources.

17 (c) A violation described in subsection (a) is subject to section 7
 18 of this chapter.

19 SECTION 2. IC 5-14-1.5-7 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) An action may be
 21 filed by any person in any court of competent jurisdiction to:

22 (1) obtain a declaratory judgment;

23 (2) enjoin continuing, threatened, or future violations of this
 24 chapter; or

25 (3) declare void any policy, decision, or final action:

26 (A) taken at an executive session in violation of section 3(a) of
 27 this chapter;

28 (B) taken at any meeting of which notice is not given in
 29 accordance with section 5 of this chapter;

30 (C) that is based in whole or in part upon official action taken
 31 at any:

32 (i) executive session in violation of section 3(a) of this
 33 chapter; ~~or at any~~

34 (ii) meeting of which notice is not given in accordance with
 35 section 5 of this chapter; or

36 (iii) series of gatherings in violation of section 3.1 of this
 37 chapter; or

38 (D) taken at a meeting held in a location in violation of section
 39 8 of this chapter.

40 The plaintiff need not allege or prove special damage different from
 41 that suffered by the public at large.

42 (b) Regardless of whether a formal complaint or an informal inquiry

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is pending before the public access counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

(1) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted, of invalidating the notes, bonds, or obligations; or

(2) with respect to any other subject matter, within thirty (30) days of either:

(A) the date of the act or failure to act complained of; or

(B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred;

whichever is later. If the challenged policy, decision, or final action is recorded in the memoranda or minutes of a governing body, a plaintiff is considered to have known that the act or failure to act complained of had occurred not later than the date that the memoranda or minutes are first available for public inspection.

(c) If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

(d) In determining whether to declare any policy, decision, or final action void, a court shall consider the following factors among other relevant factors:

(1) The extent to which the violation:

(A) affected the substance of the policy, decision, or final action;

(B) denied or impaired access to any meetings that the public had a right to observe and record; and

(C) prevented or impaired public knowledge or understanding of the public's business.

(2) Whether voiding of the policy, decision, or final action is a necessary prerequisite to a substantial reconsideration of the subject matter.

(3) Whether the public interest will be served by voiding the policy, decision, or final action by determining which of the following factors outweighs the other:

(A) The remedial benefits gained by effectuating the public policy of the state declared in section 1 of this chapter.

(B) The prejudice likely to accrue to the public if the policy, decision, or final action is voided, including the extent to

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1 which persons have relied upon the validity of the challenged
 2 action and the effect declaring the challenged action void
 3 would have on them.
 4 (4) Whether the defendant acted in compliance with an informal
 5 inquiry response or advisory opinion issued by the public access
 6 counselor concerning the violation.
 7 (e) If a court declares a policy, decision, or final action of a
 8 governing body of a public agency void, the court may enjoin the
 9 governing body from subsequently acting upon the subject matter of
 10 the voided act until it has been given substantial reconsideration at a
 11 meeting or meetings that comply with this chapter.
 12 (f) In any action filed under this section, a court shall award
 13 reasonable attorney's fees, court costs, and other reasonable expenses
 14 of litigation to the prevailing party if:
 15 (1) the plaintiff prevails; or
 16 (2) the defendant prevails and the court finds that the action is
 17 frivolous and vexatious.
 18 The plaintiff is not eligible for the awarding of attorney's fees, court
 19 costs, and other reasonable expenses if the plaintiff filed the action
 20 without first seeking and receiving an informal inquiry response or
 21 advisory opinion from the public access counselor, unless the plaintiff
 22 can show the filing of the action was necessary to prevent a violation
 23 of this chapter.
 24 (g) A court shall expedite the hearing of an action filed under this
 25 section.

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